REMARKS

The present response is intended to be fully responsive to all points of rejection raised by the Examiner in the Office Action dated October 6, 2005, which points applicant respectfully traverse. Favorable consideration and allowance of the application is respectfully requested.

Claims rejections 35 USC 101

Claims 1-25 are rejected as being directed to non statutory subject matter. Amended claim 1 has been limited to a practical application in using a computer and a computer communication medium. Applicant therefore requests that the rejection of claims 1-25 under 35 USC 101 be withdrawn.

Claims rejections 35 USC 112

Claims 1-25 are rejected as being indefinite because of the use of the word "substantially". Since that word never appear in claims 1-6, 9, 12-17, 24, Applicant therefore requests that the rejection of claims 1-6, 9, 12-17, 24 under 35 USC 112 be withdrawn.

In addition, claims 7, 8, 10, 11, 18-23, 25 are hereby amended to overcome the rejection. Applicant therefore requests that the rejection of claims 7, 8, 10, 11, 18-23, 25 under 35 USC 112 be withdrawn.

Claims rejections 35 USC 102 and 35 USC 103

Claims 1-25 are rejected as being anticipated or obvious by Zucker et al. (United States Patent Application No. 20050027617). Specifically, the independent claim 1 is rejected as being anticipated by Zucker.

Reference is initially made to paragraph 75 of Zucker, where the delivery is described. It is clear that the delivery in question is physical delivery. Notice that in this paragraph, delivery is also referred to as "freighting."

Reference is now made to the last paragraph on page 17 of the present application , where both physical merchandise and digital merchandise are discussed. It is clearly stated that digital merchandise is delivered digitally (delivered through a communication medium) rather than being physically freighted.

The examiner is now referred to claim 1 of the present application, where it is clearly stated that the merchandise to be delivered is digital merchandise. The amendment to claim 1 in the present application aims to further clarify this distinction, as well as to explicitly limit the subject matter claimed to this specific case only.

Although the term delivery is common for both physical delivery and digital delivery, the two can't be construed as equivalent. Indeed, when a digital good is delivered, it is never actually transferred. In contrast to physical delivery, a description of the digital content's contents is encoded in the point of origin and communicated to the recipient over a communication medium. The recipient entity then replicates the original digital content, such that recipient only have a (possibly identical) copy of the original digital content.

It is worth mentioning as an illustration of this point, that in the case where digital content is stored on a physical storage medium such as a CD-ROM or a DVD, the delivery of the content by means of delivering the physical medium would not be covered by this claim, as physical merchandise (the storage medium) is being delivered. In this example, the digital content is indeed transferred or freighted on a physical storage medium, rather than being replicated and communicated over a communication medium as is the case for digital delivery of digital content.

This feature of digital delivery of digital content is neither taught nor suggested in Zucker. Specifically, paragraphs 48-51, 83-85 and 113-119 to which the examiner refers, describe physical freighting and not digital delivery of digital content which is never mentioned. Indeed, Zucker knows nothing about digital delivery of digital content.

All of the matters raised by the Examiner are believed to be overcome. In view of the foregoing, it is believed this application is now in condition for allowance, and an early Notice of Allowance is respectfully requested.

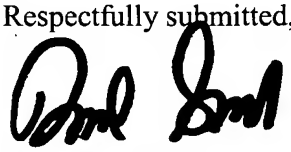
Petition For Three-Month Extension Of Time Under 37 CFR 1.136(a)

The period for responding to the instant Office Action was set to expire on January 6, 2006. Applicant hereby requests that the period for responding to the instant Office Action be extended by three (3) months, so as to expire on April 6, 2006. Accordingly, this response is being timely filed.

Payment Authorization

The fee for a Petition for a Three-Month Extension of Time is Five Hundred and Ten Dollars ($510.00) dollars for a small entity. No additional fees are believed due. The United States Patent and Trademark Office is hereby authorized to charge Deposit Account 501380 in the amount of Five Hundred and Ten Dollars ($510.00) and any additional fee which is necessary in connection with this filing.

Respectfully submitted,



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